

1 NICOLAS DALUISO, #163553
2 JOE SOLSENG, #262127
3 Robinson Tait, P.S.
4 710 Second Avenue, Suite 710
5 Seattle, WA 98104
6 Phone: (206) 676-9640
7 Facsimile: (206) 676-9659

8 Attorneys for Secured Creditor,
9 Deutsche Bank National Trust Company, as Trustee
10 for NovaStar Mortgage Funding Trust, Series 2006-4

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re } Bankruptcy Case No. 10-48255-RJN
12 WENDELL HARPER AND MARY- } Docket Control No. ND-532
13 KATHRYN HARPER }
14 Debtor. }

15 DEUTSCHE BANK NATIONAL TRUST }
16 COMPANY, AS TRUSTEE FOR }
17 NOVASTAR MORTGAGE FUNDING }
18 TRUST, SERIES 2006-4, }

19 Movant,

vs.

20 WENDELL HARPER AND MARY- }
21 KATHRYN HARPER, Debtors, and John }
22 Kendall, Trustee, }

Respondents.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR NOVASTAR
MORTGAGE FUNDING TRUST, SERIES
2006-4'S MOTION FOR RELIEF FROM
AUTOMATIC STAY

HEARING DATE:
DATE: April 7, 2011
TIME: 1:30 PM
CTRM: 220

TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTORS, THE DEBTORS' COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:

MOTION FOR RELIEF FROM STAY - 1

Law Offices of
ROBINSON TAIT, P.S.
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1 PLEASE TAKE NOTICE that DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
2 TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2006-4, ("Movant") has
3 filed the attached Motion for Relief from the Automatic Stay (the "Motion") in the above-entitled
4 and numbered Chapter 7 case.
5

6 This Motion is based upon the Memorandum of Points and Authorities attached
7 hereto, as well as upon the documents filed in support of the Motion.
8

9 DATED: March 21, 2011

10 Respectfully Submitted,
11 ROBINSON TAIT, P.S.

12 By: /s/ Nicolas Daluiso

13 NICOLAS DALUISO

14 Attorneys for Deutsche Bank National Trust
Company, as Trustee for NovaStar Mortgage
Funding Trust, Series 2006-4

NICOLAS DALUISO, #163553
JOE SOLSENG, #262127
Robinson Tait, P.S.
710 Second Avenue, Suite 710
Seattle, WA 98104
Phone: (206) 676-9640
Facsimile: (206) 676-9659

Attorneys for Secured Creditor,
Deutsche Bank National Trust Company, as Trustee
for NovaStar Mortgage Funding Trust, Series 2006-4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

WENDELL HARPER AND MARY-KATHRYN HARPER

Debtor.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR
NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2006-4.**

Movant,

vs.

WENDELL HARPER AND MARY-KATHRYN HARPER, Debtors, and John Kendall, Trustee.

Respondents.

Bankruptcy Case No. 10-48255-RJN

Docket Control No. ND-532

Chapter 7

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR NOVASTAR
MORTGAGE FUNDING TRUST, SERIES
2006-4'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
MOTION FOR RELIEF FROM STAY**

HEARING DATE:

DATE: April 7, 2011

TIME: 1:30 PM

CTRM: 220

**TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTORS, THE DEBTORS' COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:**

1 PLEASE TAKE NOTICE that DEUTSCHE BANK NATIONAL TRUST
2 COMPANY, AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2006-
3 4, (“Movant”) hereby files this Memorandum of Points and Authorities in support of its Motion for
4 Relief From The Automatic Stay (the “Motion”) in the above-entitled and numbered Chapter 7 case.

5 **I.**

6 **INTRODUCTORY STATEMENT**

7
8 Movant requests the Court to grant it relief from the automatic stay because the Debtors have
9 failed to maintain regular monthly payments and there is no equity in the property to benefit the
10 Debtors or the bankruptcy estate.

11 **II.**

12 **STATEMENT OF FACTS**

13
14 1. **The Secured Debt.** On or about June 23, 2006, WENDELL HARPER
15 AND MARY HARPER, made and delivered a Promissory Note in the original principal amount of
16 \$475,000.00, secured by a Priority Deed of Trust on the Property commonly known as 4151 Miflin
17 Court, El Sobrante, CA, 94803 (the “Property”). True and correct copies of the Note, Deed of Trust,
18 and Assignment of Deed of Trust are attached as Exhibits “1,” “2,” and “3,” respectively.

19
20 2. **The Default Under The Note.** Movant’s Note and Deed of Trust are
21 contractually due for the November 1, 2009 payment. As a result of the default, Movant desires to
22 commence or continue with foreclosure action against the Property. The total delinquency under the
Note is set forth in detail on Exhibit “4” to the Motion.

23
24 3. **The Debtors’ Interest In The Property.** The Debtors are the owners of
record of the Property.

25
26 4. **The Filing Of The Instant Petition.** On July 21, 2010, WENDELL
HARPER AND MARY-KATHRYN HARPER filed the instant Chapter 13 Petition as Case No.
27 10-48255. The case converted to a Chapter 7 on December 23, 2010

1 5. **The Total Indebtedness Under The Note.** The total indebtedness owed to
2 Movant is as follows:

3 Principal Balance:	\$ 473,974.15
4 Interest Accrued:	\$ 22,755.01
5 Deferred Interest:	\$ 23,750.00
6 Deferred Expense Advances:	\$ 2,553.00
7 Total Fees (Including Attorney costs for this Motion):	\$ 4,505.30
8 Late Charges:	\$ 692.70
9 Escrow	\$ 25,216.93
10 TOTAL:	\$ 553,447.09

11 6. **The Total Liens On The Property.** The Property is encumbered by the
12 following liens:

10 SECURED CREDITOR	11 LIEN AMOUNT
11 1. Deutsche Bank National Trust Company, as Trustee for 12 NovaStar Mortgage Funding Trust, Series 2006-4 (1 st trust deed)	\$ 553,447.09
13 TOTAL	\$ 553,447.09

14 7. **The Value Of The Property.** By the Debtors' own admission, the
15 Property has a fair market value of only \$200,000.00. Accordingly, there is no equity in the Property
16 to benefit the Debtors or the estate. True and correct copies of the Debtors' Schedules A and D are
17 attached hereto as Exhibit "5."

18 III.

19 **REQUEST FOR JUDICIAL NOTICE.**

20 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by
21 Rule 9017 of the Federal Rules of Bankruptcy Procedure, Movant, requests that the Court take
22 judicial notice of the following facts:

23 1. The Debtor contends that the Property has a fair market value of \$200,000.00.
24 See Exhibit "5."

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IV.

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CONCLUSION.

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For the foregoing reasons, and based upon the evidence set forth in this Motion, this Court
should grant the relief from the automatic stay to allow Movant to enforce its rights and remedies
under its Note and Deed of Trust up to and including foreclosure of its mortgage against the Debtor's
interest in the Property. Movant further seeks relief in order to contact the Debtor by telephone or by
written correspondence. Movant may at its option offer, provide and enter into a forbearance
agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement.
Movant requests a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of
Bankruptcy Procedure.

12

Movant further requests that this Order shall be binding and effective despite any conversion
of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
Furthermore, Movant, is specifically requesting the Court to award attorneys fees and costs incurred
in connection with this matter.

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DATED: March 21, 2011

Respectfully Submitted,

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ROBINSON TAIT, P.S.

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By: /s/ Nicolas Daluiso

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NICOLAS DALUISO

23

Attorneys for Deutsche Bank National Trust
Company, as Trustee for NovaStar Mortgage
Funding Trust, Series 2006-4

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MOTION FOR RELIEF FROM STAY - 6